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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
UNIVERSITY PLACE WATER COMPANY, )

Appellant, )

v. )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

Respondent. )

PCMB No. 80-60

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, an appeal of a Department of Ecology order cancelling appellant's permit to withdraw public ground water, came on for hearing before the Pollution Control Hearings Board, with B. Washington, Chairman, and David Akana, member, convened at Tacoma, Washington on July 17, 1980. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.210.230.

Appellant appeared by its attorney, Robert G. Gray. Respondent appeared by Charles K. Douthwaite, Assistant Attorney General.

1 Reporter Kim Otis recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were read and testimony heard and exhibits examined, the Pollution Control Planning Board makes these

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4  
5 FINDINGS OF FACT

6 I

7 On June 29, 1973, appellant, University Place Water Company  
8 (hereinafter "Company") applied to respondent, Department of Ecology  
9 (hereinafter "DOE") for a permit to appropriate public groundwater. That original application called for a well to be located on a parcel of  
10 250 feet square which the Company owns in the vicinity of the  
11 State Hospital. The application stated that the well would be  
12 applied to a use described as "Public Water Supply" meaning municipal  
13 water supply for which purpose the private Company was authorized. A  
14 well was drilled in December, 1973.

15 On January 17, 1975, DOE issued a permit to appropriate public  
16 groundwater, G 2-21219P, to the Company in response to the above  
17 application. The permit specified a development schedule of 180 days for  
18 the application of the water to the specified use of municipal water  
19 supply by August 1, 1975.

20 II

21 On August 1, 1975, no water had been produced from the well and no  
22 arrangements made for any municipal water supply from the well. The  
23 Company applied to DOE for an extension of the construction schedule.  
24 An extension was granted for the period of one year, to August 1,  
25 1976. On that date, when no progress was shown, a further extension

1 was applied for and granted until August 1, 1977. Another extension  
2 was applied for and granted until August 1, 1978. A third extension  
3 extension was applied for and granted until August 1, 1979. In  
4 meantime, at the end of 1978, the Company departed from the business  
5 of municipal water supply by transfer of that function to the City of  
6 Tacoma. The City did not purchase the well or public ground water  
7 permit in question, however, and there continued to be no flow of water  
8 from the well.

### 9 III

10 Shortly after the August 1, 1979, construction date had passed, a  
11 representative of the Company telephoned DOE and orally discussed  
12 placing the well into some other use than municipal water supply. DOE  
13 agreed to consider such a request and sent application blanks for a  
14 change of purpose of use, but also indicated that it was considering  
15 cancellation of the permit. By letter of October 17, 1979, DOE  
16 informed the Company:

17 Therefore, unless you can show good cause to  
18 the Director for either an extension and (sic)  
19 Change in Purpose of Use within sixty (60) days,  
20 this permit shall cancel.

21 There was an oral agreement to measure the sixty days from the  
22 date that the Company received the application blanks for change of  
23 purpose of use, December 3, 1979. Within the sixty days, on January  
24 22, 1980, the Company filed with DOE an application for change of  
25 purpose of use (hereinafter "change application"). The change  
26 application indicated as the requested new use: "For Municipal Water  
27 Supply".

1 later than March 6, 1980, the DOE returned the Company's original  
2 application with a cover letter stating:

3 The application was found to be totally  
4 inadequate in content and is hereby rejected.

5 Thereafter, on March 6, 1980, DOE issued an Order of Cancellation  
6 cancelling the Company's permit in question, G 2-212109. The Company  
7 appellant appeals.

#### 8 V

9 The Company urges that DOE should have afforded it an opportunity  
10 to rehabilitate its change application before rejecting it. The  
11 relief which the Company now requests of this Board is a 60-day  
12 extension within which to bring the change application into compliance  
13 with DOE requirements, together with vacation of the DOE Order of  
14 cancellation.

15 Appellant has presented no evidence identifying a specific area of  
16 the public ground water which it seeks to withdraw. It has also  
17 failed to show that it has any need for the water on property which it owns and has no other  
18 owners to use the water nor any imminent prospect of such need.

#### 19 VI

20 Any Conclusion of Law which should be reached in finding of fact is  
21 hereby adopted as such.

22 From these findings the Board enters the following:

#### 23 CONCLUSIONS OF LAW

#### 24 1

25 Appropriation of public ground waters is governed by the Federal  
26 RCW which is supplemental to the Water Code - 1971 Act, Chapter 90A.

1 RCW the terms of which are extended to apply to ground water RCW  
2 90.44.020.

3 It is fundamental public policy that:

4 Subject to existing rights, all waters within the  
5 state belong to the public, and appropriation for  
6 or to the use thereof, shall be hereafter accomplished  
7 only by appropriation for a beneficial use in  
8 the manner provided and not otherwise: . . .  
9 (proposals added) RCW 90.03.010 of Water Code -  
10 1971 Act.

11 The manner provided for obtaining a water right entails two  
12 steps. The first step involves a DOE permit stating the amount of  
13 water to which the applicant shall be entitled and the beneficial use  
14 or uses to which it may be applied. RCW 90.03.290. The second step  
15 involves a DOE certificate when an appropriator has been identified for  
16 application of that water to that beneficial use. RCW 90.03.010  
17 in re Albova Creek, 129 Wash. 9, 226 P2d. 29 (1924).

18 Linking these two steps, permit and certificate, is the  
19 requirement for a development schedule which DOE shall require with  
20 the permit and which sets the time within which water shall be applied  
21 to the beneficial use. RCW 90.03.520. The Development schedule  
22 assures that one who holds a permit entitling him to use water shall  
23 actually in fact use that water since use is the essential element of  
24 right acquired under our appropriation doctrine described in RCW  
25 90.03.010, above.

26 In this case, the Company has failed repeatedly to proceed with  
27 appropriation by applying water to a beneficial use. The DOE is  
28 therefore correct in proposing to cancel the Company's permit unless  
29 within sixty days it shows good cause why the cancellation should not

1 occur. RCW 90.03.320.

2 11

3 The only cause brought forward by the Company to avoid  
4 cancellation was its application for change of purpose of water right.  
5 An application is required where a change of purpose of water right is  
6 sought. It must state the proposed use with sufficient specificity to  
7 allow the DOE to make the "findings as prescribed to the extent of the  
8 original application." RCW 90.44.100. By this we are directed to  
9 90.44.050 and subsequently to RCW 90.03.290 prescribing the findings  
10 on an original application:

- 11 (1) availability of water
- 12 (2) beneficial use
- 13 (3) will appropriation impair existing uses
- 14 (4) will the appropriation detrimentally affect the public interest

15 The Company's change application which used only the word "non-  
16 domestic" to describe the proposed use was not sufficiently  
17 specific to make the required findings of DOE. It was  
18 therefore correct to not approve it.

19 This was not an ordinary application for change of purpose. It  
20 was one submitted for the specific purpose of showing cause why  
21 the permit should not be cancelled. The DOE properly, and on January 11, 1980,  
22 did not show cause and properly cancelled the permit. The permit  
23 should not be cancelled within 60 days of the date of receipt of the  
24 application form from DOE.

III

The Company urges, however, that DOE was wrong in "rejecting" its change application rather than returning it for re-submission. Request of RCN 90.03.270 which states, in pertinent part:

"If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion. . ."

The context in which these words appear make them applicable to original applications. Because the same findings are required for change applications as for original applications (see Conclusion of Law II, above), however, it is reasonable to accord the same opportunity for correction or completion for a change application.

While it would therefore be correct to grant additional time to "correct or complete" a change application which was partially drafted to the end that it failed to express a specific use for the applicant has for water, that is not the case here. Rather, in the hearing in this matter some 5 months after DOE rejected its change application, the Company still could not propose a specific use for water on property which it owns, nor a commitment from others to use the water nor the prospect of such a commitment. The Company has known since the end of 1976 that it could not split its water into a municipal water system. That it could now continue its one and one-half year old search for a still unknown alternative use is not grounds for granting additional time to "correct or complete" the application nor good cause for further delaying the cancellation of this permit. The Company is entitled and may wish to apply for a new

1 permit to appropriate public ground water used for a purpose  
2 water which it seeks to withdraw.

3 IV

4 Any finding of fact which should be deemed a conclusion of fact is  
5 hereby adopted as such.

6 From these Conclusions the Board enters this

7 ORDER

8 The Order of Cancellation issued by Department of Ecology under  
9 Ground Water Permit No. G 2-21219P is hereby cancelled.

10 DONE at Lacey, Washington, this 4<sup>th</sup> day of SEPTEMBER 1982.

11 POLLUTION CONTROL BOARD

12  
13  
14 David A. [Signature]  
15 DIRECTOR

16  
17  
18 David [Signature]  
19 DEPUTY DIRECTOR